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REPORTS OF COMMITTEES

OF THE

HOUSE OF REPRESENTATIVES

FOR THE

THIRD SESSION OF THE FORTY-SECOND CONGRESS.

1872-'73.

IN THREE VOLUMES.

Volume 1....No. 1 to No. 97, except Nos. 77, 78, (parts 1 and 2,) 81, 82, and 95.
Volume 2....Nos. 77, 78, (parts 1 and 2,) 81, 82, and 95.
Volume 3....No. 98, Investigation of Indian frauds.

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1873.

42D CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 95.

UNION PACIFIC RAILROAD AND CREDIT MOBILIER.

MARCH 3, 1873.—Laid on the table and ordered to be printed.

Mr. J. M. WILSON, from the Select Committee upon the Union Pacific Railroad Company and the Credit Mobilier of America, made the following

REPORT:

The special committee appointed under resolution of the House of January 1, and to which was referred the following resolution, viz:

Resolved, That the select committee to investigate the affairs of the Pacific Railroads, &c., of which Hon. Mr. Wilson, of Indiana, is chairman, are hereby instructed to inquire and report the facts to this House whether any and what sum or sums of money have been paid by either the Union Pacific Railroad Company or the Credit Mobilier of America to any member or members of the House of Representatives as attorneys, counsel, or retaining fees; and if so, what member or members have been so fee'd, and the character of the services rendered for such fees, and the circumstances which characterized such payments or retainers; and that said committee also inquire and report as aforesaid whether any and what sums of money have been paid by either of said corporations to influence the election of any members of either House of Congress, or whether any member of this House has procured from either of said corporations, or attempted to procure from either of them, or from any officer or agent of either of them, any sum of money to influence any election as aforesaid—

beg leave to make the following report:

It appears from the evidence that, in two instances, members of the House of Representatives have been employed as counsel for the Union Pacific Railroad Company. The first instance was that of Hon. Thomas A. Jenckes, a Representative from the State of Rhode Island, who was employed to defend the company in a suit brought in the State of Rhode Island in the years 1868 and 1869, and who received for his services in this case a fee of $4,500. The second instance was that of the Hon. Benjamin F. Butler, a Representative from the State of Massachusetts. It appears from the evidence that, in the month of August, 1867, there was a contest in the board of directors of the Union Pacific Railroad, between some of the New York stockholders, associated with Mr. Durant, and some of the eastern stockholders, associated with Mr. Ames and Mr. Alley; that Mr. Butler, at the solicitation of Mr. Alley, attended the meeting of stockholders held in New York for the purpose of electing directors. Legal proceedings had been resorted to by the contending parties. Mr. Butler was employed by one of these parties, and, while so employed, was consulted by the managers of the road as to the legality of the contract between the Union Pacific Railroad Company and Oakes Ames for the construction of 667 miles of the road.

The character of the services rendered and the circumstances charac-

terizing the retainer are fully set forth in the following statement of Mr. Butler:

WASHINGTON, D. C., *February* 13, 1873.

BENJAMIN F. BUTLER, having been sworn, at his own suggestion, made the following statement:

I have long known Mr. Ames, Mr. Alley, and other gentlemen of Massachusetts connected with the Union Pacific Railroad Company. On the 7th of August, 1867, I received a letter, which I hold in my hand, from Mr. Alley, dated Boston, August 7, 1867.

"MY DEAR GENERAL: I saw Mr. Oakes Ames to-day, and I told him I was very anxious that he should see you about the change of that contract of his and the agreements which he has made. It strikes me that it is illegal; and if so, it is important that he should know exactly how he stands in reference to it. He is very confiding, you know, and he thinks it is all straight and right because Tracy and these lawyers told him so. But you know their interests and feelings are with Durant. I told him that you were conversant with the whole matter; and if, upon examination, you thought it right and legal, I should be satisfied, and he might well be, but not without.

"He wants me to see you, with him, to explain my views, which I shall be glad to do. Now, when can we have an interview with you of an hour or so? I shall be away until Tuesday, and after that day I shall be glad to meet you. Please drop me a note, or inform me to-morrow at dinner, if you meet him. * * * *

"JOHN B. ALLEY."

Following my habit, I made, as you see, on the back of the letter, (which was filed by my clerk and digested,) a memorandum from which my clerk should draw up a note to be sent to Mr. Alley in reply. This memorandum is dated August 10, and is as follows:

"MY DEAR ALLEY: I will meet you and Ames at Mr. Green's office on Thursday, and talk over the 'contract' if it is personal to Ames. If it is a question as to the responsibility of the Credit Mobilier, I shall desire to give advice as counsel."

My reason was, that while I was perfectly willing to give any counsel to Mr. Ames as a friend, if I was to give legal advice in a case involving many millions, I did not feel like doing so gratuitously to a corporation which I believed and knew was amply able to pay me. I saw Mr. Ames and Mr. Alley in pursuance of that appointment. Mr. Alley had talked with me about the contract before that as friends, but not in the relation of counsel. I restated to Mr. Ames and Mr. Alley when I saw them, that if this was to be a matter affecting the organization of the company I desired to act as counsel, and in no other way. After going over the question I expressed the view that, as it then stood, it was an illegal contract. I knew that it was a contract which, *inter se*, between the stockholders of the Union Pacific Railroad Company and Mr. Ames, could not be made valid by a simple vote of stockholders. That was the question before us—whether that contract, which was known as the Oakes Ames contract, could be validated by a vote of the stockholders. I said, no; that any stockholder could, in my judgment, enjoin a proceeding under that contract. Mr. Alley then stated to me that he hoped the Union Pacific Railroad Company would employ me as counsel to go to New York, about that contract, and also on the question of the manner of their holding an annual meeting. By the organic act of the company, and by the by-laws, it was provided that a meeting could only be held on one day, a given day, and that if an election failed, then the old board held over. There was a strong contest in the board between the Massachusetts and eastern stockholders, and the New York stockholders, largely represented by Mr. Durant, as to who should get the direction of the road in the future. I went first to New York, and spent considerable time over the question of this contract. I met the other counsel, Mr. Tracy, Judge Black, and Samuel J. Tilden, and I counseled with them. Mr. Black represented McComb. Mr. Tracy represented Durant and the stockholders, and Mr. Tilden, I understood, was on our side. After that consultation, and after spending three or four or five days in New York, I returned home. Before the annual meeting I again went to New York under a letter of employment I had from the president of the board of directors, to take care, as counsel, of the interests of the stockholders. I went to New York three days, if I recollect right, certainly two days, before the election took place. I then found that both sides had gone before Judge McCunn, now dead, and had got injunctions against each side voting, each side alleging that the stock held by the other was illegal; and it seemed to be pretty clear that there could be no election without whoever voted on either side, in violation of the injunction, going to jail. That matter was dealt with at very considerable length, and at the day of the meeting neither side would vote. We held legal disputations in the matter, one way and the other, until the hour of luncheon came, about one o'clock. It then occurred to me that there must be a way to get out of that difficulty; and thereupon I went with a gentleman and found Judge McCunn, whom I had known before. I stated to him the dilemma we were in; that we were in a condi-

tion not to have any vote because both sides were enjoined, and I suggested to him to modify the injunction as against us (a copy of which I carried in my hand) so as to allow us to vote, subject to all questions to be raised on the illegality of it. Judge McCunn did so far modify the injunction as to allow us to vote. I thereupon went back and advised my clients to hold an election. It was threatened pretty loudly on the other side what would happen if we voted in defiance of the injunction. I told them that I would take the responsibility, that they need not trouble themselves about me, and we voted in the election. I was served with a notice at that time to answer an attachment for contempt before Judge McCunn next morning.

I acted as inspector at the election. I staid there the next day, and I think the day after. In the mean time the contract of Ames came up, and I advised that the only way possible to get along with that contract *inter se*, *i. e.*, among the stockholders themselves, if it was desirable to carry it out, was that it should be a contract of three parts, in which the various parties should let the road to Mr. Ames, and they should come in as partners. That is, they should take it as a joint operation as individuals and not as stockholders, and that they must get all the stockholders to sign, or else any one stockholder could stop it. I left that contract to be prepared by the other counsel. I did not prepare it myself, and I did not see it till after it was prepared. I went home, and in the due course of business I charged my clients $5,000 for services and $1,000 for expenses. Some weeks afterward, when I forwarded the bill, some of the gentlemen in the board whom I had opposed, (for in the mean time they had a compromise board,) said that it was too much. I do not know what argument was used in the board on the subject, but they said they would pay me $3,000. I said I would not take $3,000; that I would not so far demean my profession as to give advice and legal services in the matter of contracts involving $47,000,000 and to a company of $100,000,000 capital, for $3,000—that I ought to have charged $10,000. Thereupon they sent me $3,000. When I got relieved from my public duties I sent word to them that unless the other $3,000 was paid I should very likely bring suit to recover it. Subsequently that $3,000 was paid, as I believe. I did not feel very kindly to the corporation for thus undertaking to cut down my bill. On account of the disagreement, I suppose, or for some better reason, I had nothing further to do with the company until in the winter after I came to Congress. Mr. James Fisk, who I learned was the promoter of that difficulty in the election, standing behind some one, threatened to break up the company. I learned that by the newspapers. The next thing I learned was, that James Fisk sent me by messenger his check for $5,000 to be of counsel for him as against the Union Pacific Railroad Company in that contest. I saw that it would involve me in this inconsistency—that although this was a new contest, yet I could not go into it without carrying a portion of my knowledge which I had obtained as counsel for the other side. I thereupon wrote to Mr. Fisk, sending him back his check, and saying that I could not take it unless the company released me from being counsel. I wrote to Mr. Oliver Ames, I think, certainly to one of the directors, stating the fact, and saying that I wished them to consider me still their counsel, stating my reasons; and I got a letter saying that I should still be considered their counsel. But I did nothing. They sent me no money, and I received none since, because it was my request that I should be considered their counsel, and I did not wish, therefore, to charge any fee. I then advised them first that they should employ the Hon. Caleb Cushing, because I foresaw that the matter would come to the Supreme Court. I then said to Mr. Ames or to Mr. Alley, "I am afraid that before Judge Barnard in New York, the New York counsel, whom you may have, will find themselves very much embarrassed, because Judge Barnard is evidently impressed on the side of Fisk, and he will be very likely to visit with his displeasure any counsel practicing before his court who interferes with him much, and I think you had better get a man as far removed from New York influences as possible." I had known Mr. Carpenter ever since he studied law in Boston, in the office of Rufus Choate. I had heard him make arguments before the Supreme Court. I had been brought in contact with him, because there was a branch of the Soldiers' National Asylum in Milwaukee which brought me in contact with persons in that town, and with Mr. Carpenter. I saw Mr. Carpenter one day, and I said to him, "I hope that you are getting on well in your profession." He said, "Yes; and I wish I could build up a practice in Washington, before the Supreme Court." I said, "I will do anything I can to aid you in that regard, and I think I have such relations with some pretty large matters as will enable me to throw some business in your way." Thereupon, with that in my mind, and seeing the want of counsel for the company, and having a high opinion of Mr. Carpenter, I stated to Mr. Ames that in my judgment it would be better for the company to retain Mr. Carpenter in their lawsuit, which was then imminent in New York. I said that he was a man who had "tongue" in his head, and could speak for himself, and would be entirely independent, and that I knew of no such good man for them. I said to Mr. Ames, "He is a very prominent man, has the confidence of everybody, is a candidate for the Senate, practices before the Supreme Court, and is a very good man." Mr. Ames said he did not know him at all, and I then went into a very considerable description of Mr Carpenter.

Mr. Ames said that he would take it into consideration. I may have spoken to one or more of the other directors who were here. I do not recollect whether I did or did not; but if I did, it was to the same effect. The next morning, or soon after, I saw that the injunction had been issued, that the safe of the company had been broken open, and that these troubles had begun; and I there dropped the matter about Mr. Carpenter. I never spoke to Mr. Carpenter on the subject from that day to this, until after I received this anonymous letter; and then I asked him what possible foundation there could be for it.

The Central Pacific Railroad I never knew at all. I believe I have been introduced to one or two of its managers, but it was a mere passing introduction. I never spoke to them on business; never knew anything of their business; never asked them for a dollar for myself or anybody else. I believe I did ask them to give a pass over their road to my adjutant-general, and I do not know whether the request was accorded or not. I never saw a dollar of their money, or of the money of the Union Pacific Railroad Company, other than and different from what I have stated. I have no knowledge or belief, directly or indirectly, (and I mean to cover every possible form,) that either of said roads, or anybody on their behalf, ever paid a dollar to Mr. Carpenter, or that anything else took place in that regard other than I have stated. I have no belief, or suspicion, or impression that they ever either paid a dollar to him, or that he ever received a dollar from them.

That is the end and beginning of my connection with both roads. There is nothing that I desire to palliate, to excuse, or defend. I should do just so again, and will do so again just when I please, where I please, and how I please, all the world to the contrary notwithstanding.

By Mr. SLOCUM:

Q. You never stated to Mr. Ames or any one connected with the Union Pacific Railroad Company that it was desirable to have Mr. Carpenter elected to the Senate from Wisconsin instead of Mr. Washburn, Mr. Washburn being an enemy of the road?—A. No, sir. My only statement in reference to the election was as a recommendation of Mr. Carpenter, showing his standing.

Q. Did you ever state to Mr. Ames that this fee was paid subsequently to Mr. Carpenter by some other road?—A. Never in the world. I could not have stated it, for I never thought of it.

Q. Have you any other information beyond what you have given here that would aid this committee in making its investigation?—A. Within my personal knowledge there is nothing save and except what I learned in the course of my employment as counsel; but there is nothing that I know of even in that way that would be worth stating. I have various matters of information from others which I do not think proper to state.

Q. Second-hand information?—A. It is second-hand only. It might be John P. Randolph over again. I have taken a little pains myself, since this copy of the anonymous letter was furnished me, to work up Mr. Randolph, (because I wanted to know his antecedents,) wholly independent of the Sergeant-at-Arms, and I have not been able yet to discover him.

Your committee ask to be discharged.

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